

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RALPH L. DIGGS

Claimant

VS.

GOODYEAR TIRE & RUBBER CO.

Respondent

AND

LIBERTY MUTUAL INS. CO.

Insurance Carrier

Docket No. 1,030,687

ORDER

STATEMENT OF THE CASE

Claimant requested review of the April 27, 2009, Award entered by Administrative Law Judge Rebecca A. Sanders. The Board heard oral argument on August 11, 2009. Roger D. Fincher, of Topeka, Kansas, appeared for claimant. John A. Bausch, of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent).

The Administrative Law Judge (ALJ) found that claimant had a 5 percent permanent partial impairment to the body as a whole for his neck injury. The ALJ further concluded that claimant's detached right retina was not caused by claimant's accidental injury on March 28, 2006.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant requests review of the ALJ's finding that claimant's visual impairment did not arise out of and in the course of his employment with respondent. Claimant argues that the opinion of Dr. Lynn Curtis is more credible than that of Dr. Joseph Sankoorikal and requests that the Board find that claimant had a 20 percent permanent partial impairment

to his cervical spine and a 7 percent permanent partial impairment for his visual field loss, which would combine for a 26 percent permanent partial impairment to the whole body.

Respondent argues that the credible evidence supports the ALJ's Award and requests that the Award be affirmed.

The issues for the Board's review are:

(1) Did claimant suffer a permanent impairment to his vision that arose out of and in the course of his employment with respondent?

(2) What is the nature and extent of claimant's total impairment from this accident?

FINDINGS OF FACT

Claimant was working as a windup operator at respondent on March 28, 2006, when he was hit in the head by a metal bar. Respondent sent him for medical treatment, and he had 13 stitches in his forehead.¹ He returned to work after having the stitches. He testified that on his way home from work that night, he noticed a slight blurriness in his vision. The blurriness had completely cleared up by the next morning. About two or three days after the accident, he began having neck problems and headaches. Claimant was placed on light duty for two weeks and then returned to his regular job. He did not miss any time from work.

About two months after his accident, claimant was driving and started seeing double. His wife took over the driving, and they returned home. Claimant was seen by his optometrist, Dr. Meerpohl, who told him that he had a detached retina. Shortly thereafter, he had surgery to have the retina reattached. Claimant believes his retina was damaged when he was hit in the head by the metal bar and then was aggravated by the heavy physical labor he performed at his job. He said that after the accident, he noticed he sometimes had trouble with visual perception. He submitted his medical bills for the surgery on his eye to his group health insurance. While he was off work for the surgery, he was paid A & S (accident and sickness) benefits, which are benefits paid for non work-related illnesses or injuries.

Dr. Lynn Curtis is board certified in physical medicine, rehabilitation and spinal cord injury. At the request of claimant's attorney, he saw claimant on three occasions, December 18, 2006, August 21, 2008, and September 12, 2008. After he examined claimant in December 2006, he diagnosed him with a status post concussion with a head laceration, aggravation of cervical degenerative disc disease with residual occipital

¹ In his July 25, 2007, IME report, Dr. Sankoorikal mistakenly relates that claimant received four stitches.

neuralgia, and right retinal detachment with a tear and loss of visual field. Dr. Curtis did not believe claimant was at maximum medical improvement (MMI) at that time.

Dr. Curtis examined claimant again in August and September 2008, at which time claimant was complaining that he continued to have popping and snapping in his neck, with an occasional burning sensation. Upon examination, Dr. Curtis found that claimant had a permanent, symmetrical, and painful loss of range of motion, which was an aggravation of his cervical degenerative disc disease. He said that claimant had an occipital neuralgia that was a residual of his hyperextension injury when he was struck in the head. He recommended that claimant have a neurosurgical and pain consultation to decrease his level of neck pain.

When Dr. Curtis examined claimant in 2008, he opined that claimant was at MMI for his eye injury. Dr. Curtis said that claimant had gone to his eye doctor and obtained visual field testing, and those results were supplied to Dr. Curtis. Dr. Curtis also did a standard visual field screening test. After a review of the results of the testing, Dr. Curtis opined that claimant had right visual field loss. He believed that claimant's eye problems were caused by the blow to the head and subsequent retinal detachment. He said that retinal detachment can be caused by systemic disease, spontaneous events, or trauma.

Using the *AMA Guides*,² Dr. Curtis rated claimant as having a 20 percent permanent partial impairment to the whole body for aggravation of multi-level cervical degenerative disease and 7 percent permanent partial impairment to the whole body for right visual field loss. This combines to a 26 percent permanent partial impairment.

Dr. Joseph Sankoorikal, who is board certified in physical medicine and rehabilitation, initially saw claimant on July 25, 2007, at the request of the ALJ for an independent medical examination (IME) report to assess whether he had a neck injury that was caused or aggravated by his work accident. After that examination, Dr. Sankoorikal was authorized to treat claimant's neck condition. He recalled that claimant had some problems with double vision and a detached retina, but he was not asked to do an evaluation nor render any opinions regarding claimant's eyes.

When Dr. Sankoorikal examined claimant on July 14, 2008, claimant was not complaining of any radiculopathy related to his neck. He was not complaining of any numbness, tingling, weakness or sensation in his arms. He only thing he was complaining of was pain in his neck. He noted that claimant's range of motion was minimally limited secondary to pain versus any structural or neurological limitation. He checked claimant's range of motion in the neck with a goniometer, and claimant's flexion, extension, and lateral bending were all normal.

² American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Dr. Sankoorikal released claimant from treatment in July 2008. He rated him as having a 5 percent permanent partial impairment to the whole body for his neck based upon the AMA *Guides*. He did not offer any opinion as to whether claimant had any permanent impairment to his eye.

PRINCIPLES OF LAW

The Workers Compensation Board conducts de novo review of the record. K.S.A. 2008 Supp. 44-555c(a).

K.S.A. 2008 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.³ Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.⁴

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.⁵

³ K.S.A. 2008 Supp. 44-501(a).

⁴ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

⁵ *Id.* at 278.

ANALYSIS

Claimant suffered a significant trauma to his head. As a result of that injury, claimant required 13 stitches to his forehead. He suffers from loss of range of motion, neck pain and headaches. Dr. Sankoorikal performed an IME of claimant's neck and cervical spine at the request of the ALJ. He was not asked to and he did not examine or rate claimant's eyes. Dr. Sankoorikal determined that claimant did not have radiculopathy from the cervical spine and, therefore, rated claimant's neck impairment as 5 percent to the body as a whole. Dr. Curtis' 20 percent rating, on the other hand was based in part upon the presence of radiculopathy. The Board agrees with the ALJ that Dr. Sankoorikal's rating is the most credible and affirms that portion of the ALJ's Award.

Approximately two months after the accident, claimant suffered a detached retina in his right eye. This was repaired surgically, but claimant has a permanent loss of his visual field. Only one medical expert gave an opinion on whether claimant's accident caused his subsequent detached retina. Despite the amount of time that elapsed between the accident and when the retina detached, Dr. Curtis related the detached retina to claimant's traumatic accident on March 28, 2006. That opinion is uncontradicted and is accepted by the Board. Likewise, Dr. Curtis' 7 percent whole body impairment rating for claimant's loss of visual field is uncontradicted and is adopted by the Board.

CONCLUSION

(1) Claimant's detached retina injury arose out of and in the course of his employment with respondent. Claimant suffered a work-related loss of visual field and is entitled to a 7 percent permanent impairment of function for his vision loss.

(2) Claimant suffered a 5 percent permanent partial disability for his cervical injury. When this is combined with his 7 percent permanent partial disability for his visual impairment, his combined permanent partial disability is 12 percent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Rebecca A. Sanders dated April 27, 2009, is modified to find claimant's vision loss compensable and to include the 7 percent whole person impairment for claimant's loss of visual field with the 5 percent permanent partial disability awarded by the ALJ for the neck injury, for a combined permanent partial disability of 12 percent.

Claimant is entitled to 49.8 weeks of permanent partial disability compensation at the rate of \$467 per week or \$23,256.60 for a 12 percent functional disability, making a total award of \$23,256.60.

As of August 26, 2008, there would be due and owing to the claimant 49.80 weeks of permanent partial disability compensation at the rate of \$467 per week in the sum of \$23,256.60 for a total due and owing of \$23,256.60, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of August, 2009.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
John A. Bausch, Attorney for Respondent and its Insurance Carrier
Rebecca A. Sanders, Administrative Law Judge